

Message Text

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AF/EP:WHITE

TREASURY:PDAVIS(INFO)

COMMERCE:JSEVER(INFO)

CIEP:GKAMENS(INFO)

EB/ITP/OT/GCP:MGOLDMAN(INFO)

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TO AMEMBASSY NAIROBI PRIORITY

INFO AMEMBASSY LONDON

C O N F I D E N T I A L STATE 275286

C O R R E C T E D C O P Y (PARA 4C LINE 8 OMITTED)

E.O. 11652: GDS

TAGS: EINV

SUBJECT: SAUL MINING CLAIMS

REFS: (A) NAIROBI 9868; (B) LONDON 17357; (C) NAIROBI 9800; (D) NAIROBI 9298; (E) STATE 231938; (F) NAIROBI 2292 (G) STATE 282968 (DEC. 28, 1974); (H) NAIROBI 10613 (DEC. 20, 1974); (I) NAIROBI 5834 (JULY 11, 1974); (J) NAIROBI 5295 (JUNE 25, 1974); (K) NAIROBI 5196 (JUNE 22, 1974); (L) NAIROBI 5096 (JUNE 19, 1974).

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1. AS REPORTED REF E, BASIS FOR SEPTEMBER 26 DECISION OF CIEP INTERAGENCY COORDINATING GROUP ON EXPROPRIATION THAT SAUL'S MINING CLAIMS WERE NOT EXPROPRIATED BY THE GOK WITHIN THE MEANING OF SECTION 502 (B) (4) OF THE

TRADE ACT OF 1974 (TEXT OF THIS PROVISION PREVIOUSLY REPORTED REF G) WAS LWCK OF EVIDENCE OF COERCION BY THE GOK IN SAUL'S DECISION TO TAKE A MINORITY SHARE IN CORPORATION FORMED TO EXPLOIT CLAIMS.

2. REF C SINCE RECEIVED, HOWEVER, WHICH STATES "THAT SWUL'S OFFER OF 51 PERCENT SHARE IN HIS CORPORATION TO GROUP OF KENYANS WAS NEVER ACTUALLY CONSUMMATED." THIS NEW INFORMATION RAISES SERIOUS QUESTION ABOUT THE CORRECTNESS OF THE GROUP'S DECISION AND OF THE FACTUAL ASSUMPTIONS UNDERLYING IT.

3. IT IS ESSENTIAL THAT WE HAVE COMPLETE AND ACCURATE INFORMATION OF THE EVENTS RELATING TO SAUL'S CLAIMS TO CARRY OUT OUR RESPONSIBILITIES TO IMPLEMENT USG EXPROPRIATION POLICY AND, OF IMMEDIATE CONCERN, TO APPLY CONSCIENTIOUSLY THE EXPROPRIATION PROVISION OF THE TRADE ACT. AS EMBASSY IS AWARE, OUR DECISION CONCERNING 502 (B) (4) ALSO HAS IMPORTANT IMPLICATIONS FOR THE APPLICATION OF SIMILAR LEGISLATION CALLING FOR THE USG TO SUSPEND BILATERAL ASSISTANCE, AND TO VOTE NEGATIVELY ON LOANS UNDER CONSIDERATION IN INTERNATIONAL DEVELOPMENT BANKS, TO COUNTRIES WHICH EXPROPRIATE AMERICAN PROPERTY WITHOUT DISCHARGING THEIR OBLIGATIONS TO U.S. PROPERTY OWNERS UNDER INTERNATIONAL LAW (THE HICKENLOOPER AND GONZALES AMENDMENTS, RESPECTIVELY).

4. THE FOLLOWING NARRATIVE, DERIVED FROM NAIROBI REFTELS AND FROM NEWSPAPER ACCOUNTS, INCLUDES NEW INFORMATION RECEIVED REF C, AND IS OUR CURRENT PERCEPTION OF THE MATERIAL FACTS RELATING TO SAUL'S CLAIMS. WE WOULD APPRECIATE RECEIVING ASAP ANY CORRECTION OR AMPLIFICATION OF THE EVENTS DESCRIBED, AS WELL AS A SUMMARY OF OTHER RELEVANT MATERIAL FACTS WITHIN EMBASSY'S KNOWLEDGE.

-- A. ORIGINALLY, SAUL AND MILLER DISCOVERED AND STAKED OUT TWO SEPERATE CLAIMS -- THE "NGANGA" AND "PENNY" CONFIDENTIAL

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LANE" CLAIMS. EACH CLAIM WAS VALIDLY REGISTERED IN SAUL'S NAME IN CONFORMITY WITH THE LAWS OF KENYA.

-- B. IN MAY 1974, SAUL VOLUNTARILY OFFERED 51 PERCENT IN A CORPORATION TO BE FORMED TO EXPLOIT THE CLAIMS TO A NUMBER OF INFLUENTIAL KENYANS, INCLUDING HIGH-RANKING GOK OFFICIALS SUCH AS VICE PRESIDENT MOI AND MINISTER FOR TOURISM AND WILDLIFE SHAKO. IT APPEARS THAT SAUL AND MILLER AT FIRST WELCOMED THIS PARTICIPATION, HOPING IT WOULD PROVIDE THEM WITH A DEGREE OF POLITICAL PROTECTION. OVER TIME, HOWEVER, THE PROPOSED KENYAN PARTNERS, AND THE AGGREGATE SHARE WHICH THEY DEMANDED, KEPT CHANGING. THE GENERAL TREND WAS FOR THE KENYANS TO KEEP DEMANDING A

LARGER SHARE, SQUEEZING OUT SAUL AND MILLER. NONE OF THE NEGOTIATIONS APPEARS TO HAVE RESULTED IN A FINAL AGREEMENT FOR KENYAN PARTICIPATION IN THE CLAIMS.

-- C. ON JUNE 13, 1974, SAUL WAS INFORMED BY MINISTER OF NATURAL RESOURCES OMAMO THAT PROPOSED 51 PERCENT KENYAN PARTICIPATION IN THE CLAIMS WAS INSUFFICIENT. ACCORDING TO OMAMO, ONE OF THE SAUL CLAIMS INTENDED TO BE EXPLOITED BY THE CORPORATION HAD BEEN SUPERSEDED BY A CLAIM FILED BY A COMPANY HEADED BY CRITICOS, A KENYAN GREEK WHO FREQUENTLY REPRESENTED THE PERSONAL INTERESTS OF PRESIDENT KENYATTA'S FAMILY (AND WHO, ACCORDING TO THE EMBASSY, APPEARED TO BE DOING SO IN THIS CASE), ON THE GROUND THAT SAUL'S CLAIM WAS NOT PROPERLY REGISTERED. SINCE, IN OMAMO'S VIEW, THE ASSETS TO BE OWNED BY THE NEW CORPORATION HAD THEREFORE DECREASED SIGNIFICANTLY, IT WAS NECESSARY THAT THE KENYAN SHARE IN THE CORPORATION BE INCREASED TO 80 PERCENT. OMAMO INDICATED THAT SAUL WOULD PROBABLY BE DEPORTED IF HE DID NOT GO ALONG. SAUL DID NOT "GO ALONG".

-- D. ON JUNE 18, 1974, THE GOK DECLARED SAUL A "PROHIBITED IMMIGRANT," AND DEPORTED HIM TO LONDON AT GOVERNMENT EXPENSE. IMMIGRATION OFFICIALS GAVE NO REASON FOR THE EXPULSION EXCEPT THAT THE GOK HAD DETERMINED SAUL TO BE A THREAT TO "NATIONAL SECURITY." THE EMBASSY EXPRESSED ITS BELIEF TO THE DEPARTMENT THAT, BASED UPON AVAILABLE INFORMATION, THE REAL REASON FOR THE EXPULSION

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WAS THAT HIGHLY-PLACED AND INFLUENTIAL KENYANS WERE DISSATISFIED WITH THE SHARE SAUL PLANNED TO GIVE THEM IN THE RUBY DEPOSITS.

-- E. UPON SAUL'S EXPULSION, THE CRITICOS GROUP BEGAN MINING THE NGANGA CLAIM. ABOUT THIS TIME, MINISTRY OF NATURAL RESOURCES OFFICIALS VISITED SAUL'S OFFICE IN KENYA AND, IN THE PRESENCE OF MRS. SAUL, SEIZED A LARGE QUANTITY OF INDUSTRIAL-GRADE RUBIES WHICH HAD BEEN MINED FROM ONE OF THE DEPOSITS. MRS. SAUL WAS GIVEN A RECEIPT FOR THE RUBIES.

-- F. ON JUNE 24, 1974, SAUL'S PARTNER MILLER VISITED THE EMBASSY AND DESCRIBED A "FRANTIC SCRAMBLE" BY THE CRITICOS GROUP AT THE NGANGA CLAIM. MILLER INFORMED THE EMBASSY THAT HE HAD EMPLOYED A NAIROBI ATTORNEY WHO WAS CONVINCED OF SAUL'S LEGAL RIGHT TO THE NGANGA CLAIM. MILLER SPECULATED THAT THE REASON FOR SAUL'S EXPULSION WAS THAT HE HAD CHOSEN THE WRONG GROUP OF KENYANS AS PROSPECTIVE ASSOCIATES. ACCORDING TO MILLER, SAUL WOULD HAVE BEEN BETTER-OFF HAD HE ATTEMPTED TO ALIGN HIMSELF WITH CRITICOS, ACTING ON BEHALF OF THE KENYATTA FAMILY.

-- G. IN JULY 1974, THE MINISTER OF NATURAL RESOURCES INFORMED THE EMBASSY OF THE GOK'S POSITION THAT SAUL NO LONGER HAD LEGAL MINING RIGHTS IN KENYA, AND THAT HIS CLAIMS WOULD BE "DIVIDED AMONG OTHER INTERESTED CLAIMANTS". IN AUGUST 1974, SAUL'S LAWYER OBTAINED AN INJUNCTION IN KENYA TO PREVENT CRITICOS FROM MINING THE NGANGA CLAIM. A SECOND INJUNCTION WAS OBTAINED THE FOLLOWING MONTH, PRESUMABLY BECAUSE THE FIRST FAILED TO HAVE THE INTENDED EFFECTS.

-- H. SOME TIME BETWEEN AUGUST AND MID-DECEMBER 1974, PRESIDENT KENYATTA APPARENTLY TOOK STEPS TO NULLIFY THE CRITICOS CLAIM TO NGANGA, AND TO AUTHORIZE NEGOTIATIONS BETWEEN THE GOK AND SAUL TO COMPENSATE SAUL FOR HIS MINING INTERESTS. ACCORDING TO SAUL'S ATTORNEYS, THE SETTLEMENT PROCESS COMMENCED ON DECEMBER 17, 1974, WHEN THEY SENT A LETTER TO THE KENYA MINES DEPARTMENT REQUESTING COMPENSATION AND PROVIDING A VALUATION OF THE CLAIMS PREPARED BY SAUL. ON NOVEMBER 12, 1975, THE EMBASSY REPORTED THAT, CONFIDENTIAL

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ACCORDING TO SAUL'S LAWYERS, THE MINING CLAIMS HAVE LNEVER BEEN FORMALLY NATIONALIZED BY THE GOK, BUT THAT THE RUBY DEPOSITS ARE CLEAGLY UNDER THE CONTROL OF THE MINISTRY OF NATURAL RESOURCES. ALTHOUGH THE GOK HAS DECIDED IN PRINCIPLE TO COMPENSATE SAUL, AN INTERMINISTERIAL DECISION ON THE AMOUNT TO BE OFFERED HAS NOT YET BEEN MADE, WND THE USG HAS RECEIVED NO SPECIFIC ASSURANCE CONCERNING THE TIMING OF THE OFFER.

5. IN ADDITION TO EMBASSY COMMENTS ON FOREGOING NARRATIVE, WE WOULD APPRECIATE ANY ADDITIONAL INFORMATION WHICH EMBASSY BELIEVES MIGHT BEAR UPON OUR JUDGMENTS WHETHER AN EXPROPRIATION OF PROPERTY 50 PERCENT OR MORE OWNED BY U.S. CITIZENS HAS OCCURRED AND, IF SO, WHETHER THE GOK IS TAKING STEPS TO DISCHARGE ITS OBLIGATIONS TO SAUL AND MILLER UNDER INTERNATIONAL LAW AS REQUIRED BY SECTION 502 (B) (4) (D) (II) OF THE TRADE ACT. MOST IMPORTANTLY, WE ARE INTERESTED IN GETTING A CLEARER PICTURE OF THE HISTORY OF OWNERSHIP ARRANGEMENTS CONCERNING THE CLAIMS, AND OF GOK ACTION WITH RESPECT TO THEM. IF SAUL AND MILLER ORIGINALLY WERE SOLE OR MAJORITY OWNERS OF THE MINES, AND IF THEY CONTINUED AS SUCH UNTIL WHATEVER TIME (IF ANY) THE CLAIMS PASSED TO THE EFFECTIVE CONTROL OF THE GOK, AN EXPROPRIATION WITHIN THE MEANING OF THE ACT MIGHT WELL HAVE OCCURRED. ON THE OTHER HAND, IF THE CLAIMS WERE TRANSFERRED TO A BUSINESS ENTITY WITH A MAJORITY INTEREST HELD BY KENYAN CITIZENS OR GOK OFFICIALS, 502 (B) (4) MIGHT NOT APPLY. IF SUCH A TRANSFER DID TAKE PLACE, THE NATURE OF THE SHARED OWNERSHIP, AND THE PROCESS BY WHICH IT WAS EFFECTED, COULD BE IMPORTANT TO OUR ANALYSIS. WE WOULD ALSO BE INTERESTED IN KNOWING WHETHER THE GOK IS

PRESENTLY EXERCISING CONTROL OVER THE CLAIMS. IF SO, OF
WHAT SORT, FROM WHAT TIME, AND UNDER WHAT AUTHORITY?
WHAT IS THE POSITION OF SAUL'S NAIROBI ATTORNEYS CONCERN-
ING WHO PRESENTLY HAS A LEGAL RIGHT TO THE CLAIMS, AND AT
WHAT TIME THEY PASSED TO THE EFFECTIVE CONTROL OF THE GOK?

WHAT IS EMBASSY ESTIMATE OF THE SIZE OF THE INVESTMENTS
OF SAUL AND MILLER IN DISCOVERING AND DEVELOPING THE
CLAIMS, AND OF THE POSSIBLE VALUE OF THE RIGHTS AT STAKE?

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6. REQUEST EMBASSY CONTINUE TO EMPHASIZE TO APPROPRIATE
GOK OFFICIALS THE IMPORTANCE WHICH USG ATTACHES TO A
PROMPT AND SATISFACTORY RESOLUTION OF THIS CASE. KISSINGER

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